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FILED
DISTRICT COURT OF GUAM
MAY 26 2004
MARY L. M. MORAN
CLERK OF COURT
141

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

ALAN SADHWANI; et al.,)	Case No. CV 03-00036 DDP
)	
Plaintiffs.)	ORDER DENYING DEFENDANT'S MOTION
)	TO RECONSIDER ORDER DENYING
V.)	APPLICATION FOR AN ORDER
)	CERTIFYING FOR INTERLOCUTORY
HONGKONG AND SHANGHAI)	APPEAL THE DENIAL OF DEFENDANT'S
BANKING CORP., LTD; et al.,)	MOTION TO STRIKE JURY TRIAL
)	DEMAND
)	
Defendants.)	[Motion filed on 05/04/04]
)	
)	

This matter comes before the Court on the defendant Hongkong and Shanghai Banking Corporation's ("HSBC") motion to reconsider order denying application for an order certifying for interlocutory appeal the denial of the defendant's motion to strike jury trial demand. Pursuant to Local Civil Rule 7.1(e)(3), the Court finds this matter appropriate for decision without oral argument. See Local Civ. R. 7.1(e)(3). After reviewing and considering the materials submitted by the parties, the Court denies the motion and adopts the following order.

I. Background

On April 9, 2004, Judge Unpingco issued a memorandum order denying HSBC's motion to strike jury trial demand. The Court found that while the right to a civil jury trial in federal court is

1 constitutionally protected by the Seventh Amendment, it may be
2 waived by a contract that is knowingly and voluntarily executed.
3 (04/09/04 Order at 2:23-3:1.) The Court acknowledged that the
4 circuit courts are divided on the issue of which party bears the
5 burden of proving the validity, or invalidity, of a contractual
6 jury trial waiver provision, and that the Ninth Circuit has not
7 ruled on this issue. (Id. at 3:6-20.) The Court adopted the
8 position of the Second and Fourth Circuits, which places the burden
9 on the party seeking enforcement of the contractual waiver to prove
10 that consent to the waiver was knowing and voluntary. (Id. at
11 3:17-20.) After analyzing the factors used by courts in
12 determining whether a waiver was knowing and voluntary (id. at
13 3:21-5:6), the Court found that HSBC failed to meet its burden of
14 proving that the plaintiffs' contractual waivers were knowing and
15 voluntary (id. at 5:7-11).

16 Thereafter, on April 29, 2004, HSBC filed an *ex parte*
17 application for an order certifying the denial of HSBC's motion to
18 strike jury trial demand for interlocutory appeal pursuant to 28
19 U.S.C. § 1292(b) and to stay proceedings pending appeal. On April
20 30, 2004, Judge Unpingco issued an order denying HSBC's *ex parte*
21 application. The Court found that its April 9, 2004 Order denying
22 HSBC's motion to strike jury trial demand did not "involve a
23 controlling question of law as to which there is substantial ground
24 for difference of opinion." (04/30/04 Order at 1:26-27 (citing 28
25 U.S.C. § 1292(b))). The Court also found that an immediate appeal
26 from the April 9, 2004 Order would not materially advance the
27 ultimate termination of this litigation. (Id.) On May 4, 2004,
28

1 HSBC filed the instant motion to reconsider Judge Unpingco's April
2 30, 2004 Order.

3 **II. Discussion**

4 A. Legal Standard

5 Local Civil Rule 7.1(i) provides that:

6 A motion for reconsideration of the decision on any
7 motion may be made only on the grounds of (1) a
8 material difference in fact or law from that
9 presented to the Court before such decision that in
10 the exercise of reasonable diligence could not have
11 been known to the party moving for reconsideration
12 at the time of such decision, or, (2) the emergence
13 of new material facts or a change of law occurring
14 after the time of such decision, or, (3) a manifest
15 showing of a failure to consider material facts
16 presented to the Court before such decision. No
17 motion for reconsideration shall in any manner
18 repeat any oral or written argument made in support
19 of or in opposition to the original motion.

20 Local Civ. R. 7.1(i) (emphasis added).

21 Local Rules are enforceable only to the extent that they are
22 consistent with the Federal Rules of Civil Procedure. Marshall v.
23 Gates, 44 F.3d 722, 724-25 (9th Cir. 1995). The Court is obligated
24 to construe local rules so that they do not conflict with the
25 federal rules. Id. at 725. Here, Local Civil Rule 7.1(i) allows
26 for motions for reconsideration on more limited terms than does
27 Federal Rule of Civil Procedure 60(b). However, the local rule is
28 not inconsistent with the federal rule. Instead, the local rule
qualifies what grounds justify relief from the operation of an
order under Federal Rule of Civil Procedure 60(b). Therefore,
Local Civil Rule 7.1(i) is enforceable.

26 B. Analysis

27 The Court finds that HSBC's motion for reconsideration is not
28 supported by any of the grounds identified in Local Civil Rule

1 7.1(i). The Rule allows motions for reconsideration where the
2 moving party shows "(1) a material difference in fact or law from
3 that presented to the Court before such decision . . . , or, (2) the
4 emergence of new material facts or a change of law occurring after
5 the time of such decision, or, (3) a manifest showing of a failure
6 to consider material facts presented to the Court before such
7 decision." Local Civ. R. 7.1(i).

8 HSBC does not base its arguments in its current motion on the
9 grounds identified in Local Civil Rule 7.1(i). It has not
10 demonstrated material differences in fact or law, the emergence of
11 new facts or a change in law, or provided a manifest showing of a
12 failure to consider material facts presented to the Court.
13 Instead, HSBC's arguments are essentially the same as the arguments
14 it made when its *ex parte* application was before Judge Unpingco.
15 However, as set forth above, Local Civil Rule 7.1(i) expressly
16 forbids a party from repeating arguments already presented to the
17 Court. Accordingly, the Court denies HSBC's motion to reconsider
18 Judge Unpingco's April 30, 2004 Order denying HSBC's *ex parte*
19 application for an order certifying for interlocutory appeal the
20 denial of HSBC's motion to strike jury trial demand and to stay
21 proceedings pending appeal.

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1 **III. Conclusion**

2 For the foregoing reasons, the Court denies HSBC's motion for
3 reconsideration.


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5 IT IS SO ORDERED.

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8 Dated: 5-26-04


DEAN D. PREGERSON*
United States District Judge

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21 Notice is hereby given that this document was
22 entered on the docket on MAY 27 2004.
23 No separate notice of entry on the docket will
24 be issued by this Court.

25
26
27 Mary L. M. Moran
28 Clerk, District Court of Guam

By:  MAY 27 2004
Deputy Clerk Date

27 * Honorable Dean D. Pregerson, United States District Judge
28 for the Central District of California, sitting by designation.